Remarks

This Amendment is responsive to the Final Office Action of **July 29, 2005**. Reexamination and reconsideration of **claims 1-25** is respectfully requested.

Summary of The Office Action

Claims 1-6 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite due to the term "current time".

Claims 12-25 were rejected under 35 U.S.C. § 102(e) as being anticipated by Hericy et al. (US PGPUB 2002/0083188).

Claims 1-25 were rejected under 35 U.S.C. 103(a) as being anticipated by Hericy et al. (US PGPUB 2002/0083188) further in view of Russell et al. (2002/0099818).

Present Amendment

Independent claim 1 has been amended to correct an antecedent for the term "time stamp". Also, the term "current time" has been amended to "receive time" in order to address the Examiner's objection. Applicant believes this term is definite since it reflects that the time stamp is received at a receive time. One of ordinary skill would understand this from the claim language. The same would be understood by one of ordinary skill with the term "current time", which was used simply as a reference time point. The objection to claim 1 should now be overcome.

Independent claim 12 has been amended to incorporate language from dependent claim 14, which is now canceled. Independent claim 17 has been amended to incorporate language from dependent claim 19, which is now canceled. Thus, no new matter has been added and the scope of the claims have not been changed.

The Present Claims Patentably Distinguish Over the References of Record

103 Rejection - Hericy in view of Russell

Claims 1-25 were rejected under 35 U.S.C. 103(a) as being anticipated by Hericy et al. (US PGPUB 2002/0083188) further in view of Russell et al. (2002/0099818). Applicant respectfully submits that Russell does not qualify as prior art and must be removed. Therefore, the rejection is not supported by valid prior art and the rejection must be withdrawn.

In particular, Russell has a filing date of November 14, 2001 and claims priority to a provisional application filed November 16, 2000. Upon review of the provisional application, its content is substantially different from the non-provisional application. The non-provisional application is only entitled to the benefit of the common subject matter disclosed in the corresponding provisional based on 35 U.S.C. § 112, 1st paragraph (also see http://www.uspto.gov/web/offices/pac/provapp.htm - second paragraph). Thus, only the subject matter that is supported by the provisional application can obtain the benefit of the provisional's filing date.

The Office Action (on page 5) relies upon Figures 3-7 and paragraphs [0019] – [0021] and [0024-0026] of Russell. Applicant respectfully submits that paragraphs [0019] – [0021] and [0024-0026] of Russell do not appear in the provisional application and the content of these paragraphs are not supported. Also, the provisional application contains only 1 figure, which appears to be a generic version of Figure 3 in the published application. No other figures appear in the provisional application. Thus, Figures 4-8 in the published application are clearly not supported by the provisional. Therefore, Applicant believes much of the teachings of Russell are not supported by the provisional application, including the teachings relied upon for the rejection.

Therefore, the teachings of Russell that were used to support the rejection can only be prior art as of the November 14, 2001 filing date, which is after the April 20, 2001 filing date of the present application. As such, the published application of Russell does not qualify as prior

art against the present application and should be removed. The rejection based on the combined teachings of Hericy and Russell is thus not supported and must be withdrawn.

Therefore, present **claims 1-11** are in condition for allowance.

Applicant has reviewed the provisional application of Russell and believes it fails to teach or suggest the present claims and fails to cure the short comings of Hericy.

Additionally, Hericy fails to teach or suggest other recited features of claim 1. For example, the Office Action cites paragraphs [0027] and [0035] to teach "associating the time stamp with the session ID". Applicant has reviewed these sections and Hericy only mentions a "visitor's identification". However, this identification has no relation to an internet session ID and nowhere does Hericy discuss associating a time stamp to a session ID as claimed.

Claim 1 also recites that a server serves a document with the time stamp and the time stamp is returned to the same server. Hericy teaches a system where a first server 18 serves a requested document but then information is sent to a different server 20 (see [0026-0027]). Communicating with the different server 20 adds different network communication latencies that are unrelated to the server 18 that serves the document. Therefore, the claimed "determining" cannot be performed by Hericy since Hericy cannot determine the same render time per user as recited in claim 1.

Additionally, as explained in the previous response, Hericy determines page load times that are calculated from a start and stop clock on the client computer (see figure 2 and [0035]). Therefore, Hericy measures different information than recited by claim 1. Similarly, Hericy processes page load times that do not teach or suggest the recited features of claims 7, 11, 12, 17, and 23. The Examiner is invited to review the Applicant's response dated April 25, 2005 for a detail explanation of Hericy. Therefore, all claims patentably distinguish over the references of record.

102 Rejection - Hericy

Claims 12-25 were rejected under 35 U.S.C. § 102(e) as being anticipated by Hericy. Applicant refers to the above discussion of Hericy as well as the explanations from the Applicant's previous response date April 25, 2005. Hericy determines page load times that are calculated from a start and stop clock on the client computer (see figure 2 and [0035]). Therefore, Hericy measures different information than recited by independent claim 12, 17 and 23. Therefore, the recited features of claims 12, 17 and 23 patentably distinguish over Hericy and are in condition for allowance.

Withdrawal of Final Rejection

Applicant respectfully submits that the Final Rejection issued on the present application is improper based on MPEP 706.07(a) and should be withdrawn.

MPEP 706.07(a) states "Furthermore, a second or any subsequent action on the merits in any application or patent undergoing reexamination proceedings will not be made final if it includes a rejection, on newly cited art, ...of any claim not amended by applicant or patent owner in spite of the fact that other claims may have been amended to require newly cited art."

In Applicant's previous response, claims 2-4, 6, 8-10, 12-19 and 21-25 were not amended. These claims now been rejected by the newly cited Russell application and the rejection has been made final. Thus, the Final Rejection is improper under MPEP 706.07(a) and should be withdrawn.

Conclusion

For the reasons set forth above, **claims 1-13, 15-18 and 20-25** patentably and unobviously distinguish over the references of record and are now in condition for allowance. An early allowance of all claims is earnestly solicited.

Respectfully submitted,

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Date

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